COLOR-OR-TITLE
INTERIOR BOARD OF LAND APPEALS (IBLA)
DECISIONS

Appraised Value, Equities, Purchase Price

Paul R. Scott and Betty F. Scott, 76 IBLA 143 (1983). "Where the purchase price for a tract of land applied for under the Color-of-Title Act is based solely upon a Bureau of Land Management appraisal of the fair market value of the land at the date of appraisal, and no allowance is made for equitable factors which appear on the record in favor of the applicant, the case will be remanded to the Bureau of Land Management for consideration of such equities."

Benton C. Cavin, 83 IBLA 107 (1984). "Inasmuch as the Uniform Appraisal Standards, developed by the Interagency and Land Acquisition Conference, expressly cautions against cumulative appraisals of different estates in land where the entire fee is being acquired, an appraisal conducted in violation thereof is invalid, absent express justification for the deviation and a specific adjustment to avoid overvaluation of the total estate."

Benton C. Cavin, 83 IBLA 107 (1984). "The appraised market value of a parcel of land sought under the Color-of-Title Act is properly adjusted to subtract the value of the applicant's improvements. The amount properly deducted, however, is not controlled by the applicant's expenditures, but rather is dependent upon the enhancement in value to the tract created by such improvements."

Benton C. Cavin, 83 IBLA 107 (1984). "Under the Color-of-Title Act, each appellant's equities must be considered on their own merits. Among the factors properly considered are the length of an applicant's possession, the price paid and whether such price constituted fair market value, the degree of reasonableness of an applicant's belief that he or she held good title, the length of the chain of title, how the errors were caused, whether and to what extent taxes had been paid on the land, and any other factors which, in a spirit of fairness, a court of equity would recognize."

Cultivation

Mable M. Farlow, 39 IBLA 15, 86 I.D. 22 (1979). "To satisfy the requirements of a class 1 claim under the Color-of-Title Act, "valuable improvements" must exist on the land at the time the application is filed, or it must be shown that the land has been reduced to cultivation. If the land was once cultivated, but is not cultivated at the time the application was filed and has not been cultivated for 10 years previously, the cultivation requirement of the Act has not been satisfied."

Bernard R. Synder and M. Marie Synder, 70 IBLA 207, 209 (1983). "The cultivation requirement of a class 1 color-of-title claim is not satisfied if the land is not reduced to cultivation at the time the application is filed and has not been cultivated for at least 5 years previously. In the present case, although appellants arguably made an effort to cultivate after buying the land by planting the grape plants, we cannot find that the land has been reduced to cultivation where there was no continuing production of a crop and at the time of the filing of the application the land had not been cultivated for at least 5 years."

Gladys Lomax, 75 IBLA 89 (1983). "The cultivation requirement of a class 1 color-of-title claim is not satisfied if the land is merely grazed or if the land is not reduced to cultivation at the time the application is filed and no evidence is provided to support compliance with the cultivation requirement."

Malcolm C. and Helena M. Huston, 80 IBLA 53 (1984). "To establish a class 1 color-of-title claim, made under the Color-of-Title Act, the land must be reduced to cultivation at the time of filing the claim application. Although the continued planting of fruit and nut trees on a yearly basis is such activity that may qualify for cultivation of agricultural crops, that activity will not qualify under the Color-of-Title Act when conducted after the applicant has become aware of the fact that his title to the land is defective."

Benton C. Cavin, 83 IBLA 107 (1984). "The planting of seedlings and the thinning and pruning of coniferous trees are not acts of cultivation under the Color-of-Title Act but rather the placement of improvements on the land."

Deed or Written Instrument of Title

Marcus Rudnick and Marcia Rudnick, 8 IBLA 65 (1972). "A color-of-title application must be rejected where there is not shown an instrument, which, on its face, purports to convey the land in issue. A color-of-title application based entirely upon a mistaken belief that the tract is embraced within one's own holdings is not acceptable."

Bryan N. Johnson, 15 IBLA 19 (1974). "A will in which the testator merely devises "all my estate both real and personal," without reference to any specifically described property, does not constitute color-of-title to a tract of Federal land (which the testator knew he did not own). Nor does a person who, serving as executor of the will, deeds the Federal land to himself as a beneficiary under the will, establish color-of-title by such deed, since one cannot create his own title."

Ivie G. Berry, 25 IBLA 213, 214 (1976). "A quitclaim deed in which the grantor grants all of his real property which he held of record in the county at the time of the deed constitutes color-of-title to a tract of Federal land in the county which the grantor held of record at the time of the deed, despite the lack of specific description of the land in the deed, where the claimants predecessor in interest actually had an interest of record in the subject tract."

Mary C. Pemberton, 47 IBLA 373 (1980). "Where a hearing is held to allow an applicant to introduce extrinsic evidence in a color-of-title proceeding to make definite a description in a quitclaim deed which is ambiguous as to what lands are conveyed, and the applicant does not succeed in providing clear and convincing evidence that the deed did convey color-of-title or that the grantee had any reasonable basis to believe he was obtaining good title to the applied for land, the application is properly rejected."

Anthony T. Ash, 52 IBLA 210 (1981). "An instrument of conveyance upon which claimant relies is sufficient to provide color-of-title only if it describes land conveyed with such certainty that boundaries and identity of land may be ascertained. The color-of-title application is properly rejected where the claimed land is not described in deeds produced to support an applicant's claim."

Louis Mark Mannatt, 109 IBLA 100 (1989). "A class 1 color-of-title claim must be based upon a document which, on its face, purports to convey the claimed land to claimant or his predecessor. Where the only evidence of conveyance is a bill of sale conveying a cabin located on the claimed land, a color-of-title application is properly rejected."

Basillo R. and Armida, D. Torres, 129 IBLA 330 (1984). "To demonstrate possession under claim or color-of-title an applicant's claim of apparent ownership must be based on a document which, on its face, purports to convey title to the claimed land. Thus, the applicant can claim only the land actually described in the documents on which his color-of-title claim is based."

Albert H. Munhall, 150 IBLA 171 (1999). "An applicant seeking title to a tract of land pursuant to the Color-of-Title Act has the burden of establishing to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met. A failure to carry this burden with respect to any of the requirements of that Act is fatal to the application. To demonstrate possession under claim or color-of-title an applicant's claim of ownership must be based on a document which, on its face, purports to convey title to the claimed land. An application fails if a description is so vague or indefinite that it cannot be said that the conveyance included the land being sought."

Good Faith

Kim C. Evans, 82 IBLA 319 (1984). "An application for a class 1 color-of-title claim requires that the land be held in good faith for at least 20 years by the claimant or her predecessors in title. If a predecessor in title held the land in good faith, then her time may be tacked onto that of the claimant. A claimant may not rely on the good faith possession of remote predecessors despite the bad faith of her immediate predecessors. Once the chain of good faith possession is broken, it must begin anew."

Felix F. Vigil, 84 IBLA 182 (1984). "An application for a class 1 color-of-title claim requires that the land has been held in good faith and in peaceful adverse possession by the claimant or

his predecessors in title. Good faith requires that the claimant and his predecessors in title honestly believe that they were vested with title. Possession of a grazing lease by an applicant constitutes acknowledgment of Federal ownership which negates the requisite good faith."

William T. Bertagnole, 87 IBLA 34 (1985). "Good faith under the Color-of-Title Act requires that the claimants and their predecessors-in-interest honestly believe themselves seized of the title, and the Department may consider whether such belief was unreasonable in light of the facts actually known or available to the claimants or a predecessor. However, undocumented hearsay evidence, indicating a lack of good faith because some people in the community are aware of the title being in the Federal government, will not overcome substantial and documented evidence that the applicant acted in the good faith belief that he was seized of title."

Patti L. Keith, 100 IBLA 89, 93 (1987). "An applicant who believes or has reason to believe that title to land is in the United States at the time when the applicant acquires title to the land has not established the good faith necessary to support a color-of-title claim. Independent of the issue of the knowledge of appellant's predecessors-in-interest regarding the lack of a patent, BLM was justified in rejecting the color-of-title application on the ground appellant, herself, had taken title with knowledge of the patent problem. A claimant may not take title to land with knowledge of the interest of the United States in the land and still qualify under the Color-of-Title Act."

John P. and Helen S. Montoya, 113 IBLA 8 (1990). "An essential element of a color-of-title claim is the good faith requirement. Good faith under the Color-of-Title Act mandates that an applicant and his predecessors honestly believed that they were vested with title. In order to determine whether a claimant or his predecessor honestly believed that he was seized with title, the Department may consider whether such belief was unreasonable in light of the facts then actually known. Knowledge of Federal ownership of the land negates the requisite good faith. To establish the requisite over 20 years of possession, an applicant may tack onto his possession a period when the land was possessed by his predecessors in title, but if this is done, their good faith must also be established. If, however, a predecessor in title did not hold good faith, the chain is broken, the holding period of the predecessor in title cannot be tacked on, and the statutory period begins anew after the predecessor divested himself of title."

Joe T. Maestas, 149 IBLA 330, 334 (1999). "Good faith, as that term is used in the Color-of-Title Act 43 U.S.C. § 1068 (1994), requires that a claimant and his predecessors-in-interest honestly believe that no defect exists in the title to the land claimed. In making the determination of whether the claimant honestly believed that there was no defect in title, the Department may consider the reasonableness of such belief in light of the facts actually known to the claimant. In the instant case, Appellant, and before him his father, has held Federal grazing privileges on the land since 1974. Possession of a Federal grazing lease by a claimant constitutes acknowledgment of ownership of the land by the United States. There can be no such thing as good faith in an adverse holding, where the party knows he has no title, and that, under the law, which he is presumed to know, he can acquire none by his occupation. Thus, Appellant's grazing privileges indicate his knowledge of Federal ownership of the land, which negates the requisite

good faith."

Peaceful Adverse Possession

Lawrence E. Willmorth, 32 IBLA 378 (1977). "In order to establish the adverse possession required for a class 1 color-of-title claim, a claimant must establish that he and his predecessors in title were in actual, exclusive, continuous, open, and notorious possession of the land for 20 years."

John S. Cluett, 52 IBLA 141 (1981). "A claim under the Color-of-Title Act, 43 U.S.C. § 1068 (1976), has not been held in peaceful adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes."

Grant Howe, 56 IBLA 145 (1981). "An applicant under the Color-of-Title Act, 43 U.S.C. § 1068 (1976), for a patent of Federal land must establish peaceful adverse possession of the land claimed. Where a tract of public land is divided by a fence in place for 40 years, which marks the limit of the claimant's possession, his claim is properly limited to the land on the side of the fence which he has occupied and improved."

Louis Mark Mannatt, 109 IBLA 100 (1989). "An applicant for a class 1 color-of-title claim must show peaceful adverse possession of the claimed lands for a period of at least 20 years. Mere occupancy of the public lands and the making of improvements thereon give rise to no vested rights against the United States, absent some colorable claim of right of possession."

Shirley and Pearl Warner, 125 IBLA 143 (1993). "Because there can be no peaceful, adverse possession where the applicant's chain of title commences at a time when the land was withdrawn or reserved for Federal purposes, a color-of-title application is properly rejected where the applicant fails to produce a document which on its face purports to convey the claimed land prior to the time the land was reserved as a national forest."

Taxes

Estate of John C. Brinton, 25 IBLA 283, 286 (1976). "A state statute which conclusively presumes that in certain circumstances taxes have been paid does not satisfy the class 2 Color-of-Title Act requirement that taxes levied on the land have been paid on the land for a period commencing not later than January 1, 1901, to the date of the application. A tax deed cannot be tacked on to the earlier claim of title. Such a deed commences a new title."

Estate of John C. Brinton, 71 IBLA 160 (1983). "Acquiring title to Federal lands by tax deed from a local state authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color of title commenced. There is no privity between the person acquiring the tax deed and any previous owner."

Paul Marshall et al., 82 IBLA 298 (1984). "Acquiring title to Federal lands by tax deed from a local authority that mistakenly believes it has title to the lands initiates a new title for the purposes of determining when possession under color-of-title commenced. Thus, a tax deed is sufficient to support a claim of title if held at the beginning of the 20-year period for a class 1 claim."

Richard S. Christensen, 85 IBLA 108 (1985). "BLM may properly reject a color-of-title application filed pursuant to sec. 1 of the Color-of-Title Act, as amended, 43 U.S.C. § 1068 (1982), where the applicant claims chain of title originating with a certificate of tax sale to the county, executed prior to the withdrawal for Federal purposes. A certificate of tax sale does not constitute a conveyance and does not establish color-of-title because the right of redemption had not expired and there can be no adverse possession."

Agee S. Broughton, Jr., Trustee, 95 IBLA 343, 344 (1987). "Under 43 U.S.C. § 1068 (1982), one who files a class 2 color-of-title application is required to establish, inter alia, that the tract applied for has been held in good faith and in peaceful, adverse possession by the claimant, his ancestors or grantors, under color or claim of title for a period commencing not later than Jan. 1, 1901, to date of application, during which time they have paid taxes levied on the land by state and local governmental units. BLM properly rejects a class 2 application where these requirements are not met. There is simply no basis in law for appellant's assertion that local or State records showing tax assessments constitute color-of-title to land. It has been held that a claim or color-of-title must be established, if at all, by a deed or other writing which purports to pass title and which appears to be title to the land, but which is not good title. Tax assessment records neither purport to be title nor to convey it. Nor does the mere existence of records showing that taxes have been assessed establish that they have been paid. Appellant has failed to establish either statutory prerequisite to the grant of a class 2 color-of-title application."

Soterra, Inc., 95 IBLA 352, 355 (1987). "BLM properly rejects a class 2 color-of-title application if the applicant fails to submit evidence showing payment of taxes levied on the land for the period commencing not later than Jan. 1, 1901, to the date of application. The destruction of court house records clearly puts appellant at a disadvantage in this case in establishing a class 2 claim; however, the requirement to show payment is a statutory requirement and may not be waived."

Walter W. Bender, 146 IBLA 134, (1998). "A tax title has nothing to do with the previous chain of title and does not in any way connect itself with it. It is the breaking up of all previous titles, legal and equitable."

Thomas E. Pluska & Michael J. McCormack, 154 IBLA 38 (2000). "BLM properly rejects a class 2 color-of-title application if the applicant fails to submit evidence showing payment of taxes levied on the land for the period commencing not later than January 1, 1901, to the date of the application."

Archie Ledon Cole, 155 IBLA 202 (2001). "A right to Federal lands cannot be created by state law pertaining to adverse possession of non-Federal land. Where the basis for a claimant's asserted title to Federal land is derived from state law, the claim is not cognizable under the Color-of-Title Act, as amended, 43 U.S.C. § 1068 (1984)."

Valuable Improvements

Gladys Lomax, 75 IBLA 89 (1983). "Where a color-of-title application claims that valuable improvements have been constructed, and an investigation reveals that the only improvements existing at the time the application was filed were an abandoned oil well and certain roads or trails providing access to the property, the application was properly rejected for failing to satisfy the requirement for valuable improvements."

Malcolm C. and Helena M. Huston, 80 IBLA 53 (1984). "To establish a class 1 color-of-title claim, made under the Color-of-Title Act, claimed improvements must enhance the value of the land. A one-lane dirt road that passes through the applied for tract as access to adjacent land cannot be considered a valuable improvement."

Benton C. Cavin, 83 IBLA 107 (1984). "Where structures on land sought under color-of-title application clearly enhance the value of the land for uses to which the land may properly be put, such structures constitute improvements of land within the meaning of a class 1 color-of-title claim."

Benton C. Cavin, 83 IBLA 107 (1984). "Where the evidence establishes that various structures were destroyed by agents of the Federal government, the government will not be heard to argue that such structures did not constitute improvements within the meaning of the Color-of-Title Act, absent a compelling showing that such structures did not enhance the value of the land at the time of their destruction."

Benton C. Cavin, 83 IBLA 107 (1984). "The appraised market value of a parcel of land sought under the Color-of-Title Act is properly adjusted to subtract the value of the applicant's improvements. The amount properly deducted, however, is not controlled by the applicant's expenditures, but rather is dependent upon the enhancement in value to the tract created by such improvements."

Mattie J. Patterson, 149 IBLA 367 (1999). "Where a BLM decision properly rejecting a class 2 color-of-title application also affirms a preliminary determination that the applicant's class 1 application must be rejected because improvements were not placed on the land nor were the lands reduced to cultivation, and the record indicates that applicant's predecessors-in-interest engaged in forestry practices on the land, the decision will be vacated and the case remanded to allow the applicant to show that such practices resulted in valuable improvements on the land."

Soterra, Inc., 95 IBLA 352 (1987). "Where a decision rejecting a class 2 color-of-title application BLM observes that the applicant also failed to meet the class 1 requirements because valuable improvements were not placed on the land nor were the lands reduced to cultivation, but the record indicates appellant engaged in forestry practice on such land, the decision will be vacated in part and the case remanded to allow the applicant to submit a class 1 application detailing those practices in support of the position that valuable improvements were placed on the land."

Ralph E. Willamson, 125 IBLA 255 (1993). "Where BLM's determination that a class 1 color-of-title applicant has failed to show that valuable improvements have been placed on the land or that some part of the land has been reduced to cultivation is based on its review of the application and a field examination, but the record is unclear whether BLM properly considered whether the applicant's silvicultural activities support a claim that valuable improvements have been placed on the land, its decision rejecting the color-of-title application will be set aside and the application remanded for further consideration."